

STATE OF MONTANA TERM CONTRACT

Department of Administration
State Procurement Bureau
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T.C. #: SPB06-1233R
Title: AERIAL PRODUCTS, RE-BID ITEMS 5, 6, 8-17
This is a non-exclusive contract.

CONTRACT TERM	FROM	APRIL 10, 2007	CONTRACT STATUS	NEW ()
	TO	APRIL 9, 2008		RENEW (xx)
VENDOR ADDRESS	XPEDX 1495 MONAD ROAD BILLINGS, MT 59102		VENDOR ADDRESS	F-11 PHOTOGRAPHIC SUPPLIES 16 E MAIN STREET BOZEMAN, MT 59715
ATTN:	DAVE SMITH		ATTN:	MARSHA PHILLIPS
PHONE:	406-252-2103		PHONE:	406-587-1300
FAX:	406-248-9334		FAX:	406-587-3277
E-MAIL:	Dmontana.smith@ipaper.com		E-MAIL:	N/A

PRICES: PER CONTRACT

DELIVERY: PER CONTRACT

F.O.B.: PER CONTRACT

TERMS: PER CONTRACT

REMARKS: The vendors for this contract are Xpedx and F-11 Photographic Supplies.
This is the first renewal, second year of the contract.

IFB/RFP No.:

SPB06-1233R

RHONDA R. GRANDY, CONTRACTS OFFICER

DATE:

AUTHORIZED SIGNATURE

Standard Terms and Conditions

By submitting a response to this invitation for bid, request for proposal, limited solicitation, or acceptance of a contract, the vendor agrees to acceptance of the following Standard Terms and Conditions and any other provisions that are specific to this solicitation or contract.

ACCEPTANCE/REJECTION OF BIDS, PROPOSALS, OR LIMITED SOLICITATION RESPONSES: The State reserves the right to accept or reject any or all bids, proposals, or limited solicitation responses, wholly or in part, and to make awards in any manner deemed in the best interest of the State. Bids, proposals, and limited solicitation responses will be firm for 30 days, unless stated otherwise in the text of the invitation for bid, request for proposal, or limited solicitation.

ACCESS AND RETENTION OF RECORDS: The contractor agrees to provide the department, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance (Mont. Code Ann. § 18-1-118). The contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of three years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the State of Montana or third party.

ALTERATION OF SOLICITATION DOCUMENT: In the event of inconsistencies or contradictions between language contained in the State's solicitation document and a vendor's response, the language contained in the State's original solicitation document will prevail. Intentional manipulation and/or alteration of solicitation document language will result in the vendor's disqualification and possible debarment.

ASSIGNMENT, TRANSFER AND SUBCONTRACTING: The contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the department. (Mont. Code Ann. § 18-4-141.)

AUTHORITY: The following bid, request for proposal, limited solicitation, or contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

COMPLIANCE WITH LAWS: The contractor must, in performance of work under the contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

CONFORMANCE WITH CONTRACT: No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without prior written consent of the State Procurement Bureau. Supplies delivered which do not conform to the contract terms, conditions, and specifications may be rejected and returned at the contractor's expense.

DEBARMENT: The contractor certifies, by submitting this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the contractor cannot certify this statement, attach a written explanation for review by the State.

DISABILITY ACCOMMODATIONS: The State of Montana does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals, who need aids, alternative document formats, or services for effective communications or other disability-related accommodations in the programs and services offered, are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

FACSIMILE RESPONSES: Facsimile responses will be accepted for invitations for bids, small purchases or limited solicitations ONLY if they are completely received by the State Procurement Bureau prior to the time set for receipt. Bids, or portions thereof, received after the due time will not be considered. Facsimile responses to requests for proposals are ONLY accepted on an exception basis with prior approval of the procurement officer.

FAILURE TO HONOR BID/PROPOSAL: If a bidder/offeror to whom a contract is awarded refuses to accept the award (PO/contract) or, fails to deliver in accordance with the contract terms and conditions, the department may, in its discretion, suspend the bidder/offeror for a period of time from entering into any contracts with the State of Montana.

FORCE MAJEURE: Neither party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the non-performing party, so long as such party is using its best efforts to remedy such failure or delays.

HOLD HARMLESS/INDEMNIFICATION: The contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

LATE BIDS AND PROPOSALS: Regardless of cause, late bids and proposals will not be accepted and will automatically be disqualified from further consideration. It shall be solely the vendor's risk to assure delivery at the designated office by the designated time. Late bids and proposals will not be opened and may be returned to the vendor at the expense of the vendor or destroyed if requested.

PAYMENT TERM: All payment terms will be computed from the date of delivery of supplies or services OR receipt of a properly executed invoice, whichever is later. Unless otherwise noted in the solicitation document, the State is allowed 30 days to pay such invoices. All contractors will be required to provide banking information at the time of contract execution in order to facilitate State electronic funds transfer payments.

RECIPROCAL PREFERENCE: The State of Montana applies a reciprocal preference against a vendor submitting a bid from a state or country that grants a residency preference to its resident businesses. A reciprocal preference is only applied to an invitation for bid for supplies or an invitation for bid for nonconstruction services for public works as defined in section 18-2-401(9), MCA, and then only if federal funds are not involved. For a list of states that grant resident preference, see <http://www.mt.gov/doa/gsd/procurement/reciprocalpreference.asp>.

REFERENCE TO CONTRACT: The contract or purchase order number MUST appear on all invoices, packing lists, packages and correspondence pertaining to the contract.

REGISTRATION WITH THE SECRETARY OF STATE: Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with sections 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://www.sos.state.mt.us>.

SEPARABILITY CLAUSE: A declaration by any court, or any other binding legal source, that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually dependent.

SHIPPING: Supplies shall be shipped prepaid, F.O.B. Destination, unless the contract specifies otherwise.

SOLICITATION DOCUMENT EXAMINATION: Vendors shall promptly notify the State of any ambiguity, inconsistency, or error, which they may discover upon examination of a solicitation document.

TAX EXEMPTION: The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED: Contractor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants,

or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (Mont. Code Ann. § 18-5-603.) Contact the State Procurement Bureau at (406) 444-2575 for more information concerning nonvisual access standards.

TERMINATION OF CONTRACT: Unless otherwise stated, the State may, by written notice to the contractor, terminate the contract in whole or in part at any time the contractor fails to perform the contract.

UNAVAILABILITY OF FUNDING: The contracting agency, at its sole discretion, may terminate or reduce the scope of the contract if available funding is reduced for any reason. (Mont. Code Ann. § 18-4-313(4).)

U.S. FUNDS: All prices and payments must be in U.S. dollars.

VENUE: This solicitation is governed by the laws of Montana. The parties agree that any litigation concerning this bid, request for proposal, limited solicitation, or subsequent contract, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (Mont. Code Ann. § 18-1-401.)

WARRANTIES: The contractor warrants that items offered will conform to the specifications requested, to be fit and sufficient for the purpose manufactured, of good material and workmanship and free from defect. Items offered must be new and unused and of the latest model or manufacture, unless otherwise specified by the State. They shall be equal in quality and performance to those indicated herein. Descriptions used herein are specified solely for the purpose of indicating standards of quality, performance and/or use desired. Exceptions will be rejected.

Revised 7/05

1.0 SCOPE

The State of Montana, Department of Administration, State Procurement Bureau (SPB) is issuing this Term Contract to F-11 Photographic Supplies and Xpedx. The intent of this contract is to provide state agencies with an expedited means of procuring aerial products and related supplies. The purpose of this Term Contract is to secure uniform pricing, for a specified time, for products and supplies to be purchased on an “as-needed if needed” basis. The State does not guarantee the purchase of a specified number or specified dollar amount.

This Term Contract will be available to all agencies across the State of Montana. The State intends to make available as wide a range of products as possible so using agencies will be able to choose the products and supplies that best meet their needs. It will be vendor’s responsibility to market their products to the using agencies.

2.0 CONTRACT TERM

The original contract term took effect on March 10, 2006, and terminated on April 9, 2007. This first renewal period will be in effect from April 10, 2007 through April 9, 2008.

3.0 CONTRACT RENEWAL

This contract may, upon mutual agreement between the parties and according to the terms of the existing contract, be renewed in one-year intervals, or any interval that is advantageous to the State. This contract, including any renewals, may not exceed a total of seven years.

4.0 NON-EXCLUSIVE CONTRACT

The intent of this contract is to provide state agencies with an expedited means of procuring supplies and/or services. This contract is for the convenience of state agencies and is considered by the State Procurement Bureau to be a “Non-exclusive” use contract. Therefore, agencies may obtain this product/service from sources other than the contract holder(s) as long as they comply with Title 18, MCA, and their delegation agreement. The State Procurement Bureau does not guarantee any usage.

5.0 TERM CONTRACT REPORTING

Term contract holder(s) shall furnish annual reports of term contract usage. Each report shall contain the product description, total quantity sold of each item, total dollars expended, and the name of the agency purchasing the item. The first report for this term contract will be due July 15, 2007. The remaining reports will be due on July 15th of the current contract period.

Reported volumes and dollar totals may be checked by the State Procurement Bureau against State records for verification. Failure to provide timely or accurate reports is justification for cancellation of the contract and/or justification for removal from consideration for award of contracts by the State.

6.0 COOPERATIVE PURCHASING

Under Montana law, public procurement units, as defined in section 18-4-401, MCA, have the option of cooperatively purchasing with the State of Montana. Public procurement units are defined as local or state public procurement units of this or any other state, including an agency of the United States, or a tribal procurement unit. Unless the bidder objects, in writing, to the State Procurement Bureau prior to the award of this contract, the prices, terms, and conditions of this contract will be offered to these public procurement units. However, the State Procurement Bureau makes no guarantee of any public procurement unit participation in this contract.

7.0 COST/PRICE ADJUSTMENTS

Price Adjustments Negotiated Based on Changes in Vendor's Costs. Price adjustments may be permitted at the time of contract renewal through a process of negotiation with the vendor and the State. Any price increases must be based on demonstrated industry-wide or regional increases in the vendor's costs. Publications such as the Federal Bureau of Labor Statistics and the Consumer Price Index (CPI) for all Urban Consumers may be used to determine the increased value.

8.0 PRODUCT PRICING

8.1 Price Protection

This term contract provides price protection by establishing the price for products and supplies as specified in the vendor's response to SPB06-1233R for the term of this contract.

8.2 Price Reductions

Price reductions will be accepted throughout the term of this contract. The vendor shall reduce the contract price of any product initially provided or added by at least the same percentage as any manufacturer's or distributor's dealer price reduction. The intent of this requirement is to insure that the State maintains a competitive price relative to the market price throughout the term of this contract and thereby insure utilization of this agreement for the benefit of both the State and the vendor. If contract prices do not remain competitive with the market for the products and services provided through this term contract, the State may elect to terminate this contract.

9.0 PURCHASING CARD

The State of Montana has a Purchasing Card Program in place that gives agencies the ability to charge purchases made from these contracts. The State of Montana prefers this method of payment.

10.0 ORDERING

Agencies shall order directly from the vendor in accordance with the terms and conditions of this contract. Orders shall reflect contract prices in effect on the date of order issuance.

Agencies shall use the following ordering procedures. The State reserves the right to change these ordering procedures as needed.

- 10.1** Orders may be placed by telephone, e-mail, or by mailing or faxing a purchase order or other appropriate order document to the vendor.
- 10.2** If orders are placed by telephone, they must be followed by a mailed or faxed purchase order or other appropriate order document.
- 10.3** Purchase orders or other appropriate order documents must include part number(s), quantity, price, ship to address and bill to address, and must reference this Term Contract number, SPB06-1233R.
- 10.4** The vendor will provide requesting agencies with a complete product listing, or maintain a web site with the following information on aerial products and supplies, item description, contract price, link to manufacturer information (if applicable).

11.0 DELIVERY

- 11.1** All ordered products are to be delivered within 30 days from the date of receipt of an order. Failure to meet the 30-day delivery schedule may result in cancellation of the order and/or this contract.
- 11.2** If the vendor is unable to meet the maximum delivery schedule of 30 days, the ordering agency must be notified and an alternate delivery schedule may be mutually agreed upon.
- 11.3** Agencies requesting an alternate, expedited delivery schedule must be contacted if the alternate schedule cannot be met. If an alternative delivery schedule cannot be negotiated, the State reserves the right to cancel the order.
- 11.4** Shipments shall all be F.O.B. destination.

12.0 CONSIDERATION/PAYMENTS

- 12.1** In consideration for the products and services to be provided, the ordering agency will pay within 30 days of receipt of a properly executed invoice. The vendor will bill each agency directly for products and services provided.
- 12.2** The ordering agencies may withhold payments to the vendor if the vendor has not performed in accordance with this contract.

13.0 ADDITION/DELETION PROCEDURE

New products or upgrades within the intent of this term contract and the contract product line may be added. Obsolete, discontinued, or products no longer required by the State may be deleted. The procedure to be used to add or delete products for this contract, and thereby requesting a contract modification, are:

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- 13.1** The Contractor may propose new products/deletions by sending a letter, with an attached listing of the product to be added/deleted and applicable new product specification/performance information, to the State Procurement Bureau. All additions and deletions affecting the current term contract must be provided at least 30 days prior to the requested effective date of the revision(s).

14.0 PRODUCT SPECIFICATIONS/QUOTE SECTION

- | | | |
|-----|---|------------------------------|
| 5. | Kodak Aerographic Double X
F-11 Photographic Supplies
Xpedx | 20% Off List
12% Off List |
| 6. | Kodak Aerographic Color 2444
F-11 Photographic Supplies
Xpedx | 20% Off List
12% Off List |
| 8. | Glacial Acetic Acid 28% 16 oz.
F-11 Photographic Supplies | 20% Off List |
| 9. | PEC 12 Film cleaner 4 ounce
F-11 Photographic Supplies | 20% Off List |
| 10. | Peca Products Cleaner 1 oz bottle
F-11 Photographic Supplies | 20% Off List |
| 11. | Kodak Lens Tissue 50 sheet pack
F-11 Photographic Supplies | 20% Off List |
| 12. | Photographic Solutions E Wipe Professional
Cleaning System for Critical Optics 25 sheets
F-11 Photographic Supplies | 20% Off List |
| 13. | 885 Developer & Replenisher To make 60 liters*
F-11 Photographic Products
Xpedx | 20% Off List
5% Off List |
| 14. | 885 Fixer To make 60 liters
F-11 Photographic Supplies
Xpedx | 20% Off List
5% Off List |
| 15. | 885 Developer Starter To start 34 liters
F-11 Photographic Supplies
Xpedx | 20% Off List
5% Off List |
| 16. | Glacial Acetic Acid 28% 16 oz.
F-11 Photographic Supplies | 20% Off List |
| 17. | Kodak Splicing Tape cat #857-7546
Xpedx | 5% Off List |